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PACIFIC TELESIS
Group-Washington

November 20, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of its *"Petitions for Reconsideration"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan Ciamporcero

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS ON PETITIONS FOR RECONSIDERATION

Pacific Telesis Group ("PTG") hereby comments on petitions for reconsideration of the Commission's Second Report and Order in the above-captioned docket.[1]

The Second Report and Order establishes a regime that is highly favorable to new entrants. Nevertheless, certain would-be entrants seek rules that are even more to their liking. We urge the Commission to deny these petitions, as described below.[2]

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, released August 8, 1996 ("Second Report and Order").

[2] PTG has appealed the Second Report and Order because it is concerned that the Commission has exceeded its jurisdiction under Sections 251 and 252 of the Communications Act. See Bell Atlantic Telephone Companies and Pacific Telesis Group v. FCC, Nos. 96-1333, 1337 (D.C. Cir.). In commenting on certain Petitions for Reconsideration, we do not ourselves seek any reconsideration of the rules, but simply urge the Commission to reject attempts to make them even more onerous.

I. With Number Portability, Area Code Overlays Raise No Competitive Issues.

In the Second Report and Order, the Commission allows States to adopt all-services area code overlay plans subject to two conditions: mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and availability to other carriers of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay. Second Report and Order, para. 286.

A number of would-be entrants oppose overlay area codes until permanent number portability is available. See, for example, Cox, p. 2; MFS, p. 7; AT&T, p. 8. These are not new arguments. The Commission already considered and responded to them.

As the Commission properly found, conditioning overlays on permanent number portability would "effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust." Second Report and Order, para. 290. As the Commission recognizes, and as we have learned in hundreds of hearings and workshops on area code introductions, these are matters of uniquely local concern that arouse strong feelings among subscribers.

As the Commission also found, "[w]hile permanent number portability is being implemented, end users will be allowed to keep their telephone numbers when they change carriers, under the Commission's mandate of interim number portability." Second Report and Order, para. 290. If numbers are portable, as they are, area code overlays raise no anticompetitive concerns. Contrary to AT&T (p. 9), it is irrelevant to number *administration* that number *portability* today falls short of some Platonically ideal state envisioned by AT&T. Likewise, Cox's statement that "[w]ithout the additional precondition of permanent number

portability, incumbent LECs will continue to have the incentive to seek to impose overlays as a means to thwart competition" is simply a *non sequitor.* Neither Cox nor any other new entrant ever explains why our incentive to "impose" overlays changes based on what kind of number portability is in effect.[3] In reality Cox, MFS, and AT&T just want to re-argue interim number portability issues. Their requests should be denied. The Commission has already issued a ruling addressing permanent number portability, which resolves the alleged shortcomings of interim number portability.[4]

II. The Commission Should Resist Invitations to Micromanage NXX Code Administration When Area Codes Verge On Exhaust.

In the Second Report and Order, the Commission allowed all-services area code overlays "only when they include: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay." Second Report and Order, para. 286.

We are already troubled by this requirement (on which the Commission did not request comment) because, depending on how it is interpreted, it may be inherently impracticable. The reason area code relief, such as an overlay, is necessary in the first place is

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[3] Obviously, we do not "impose" overlays in the first place. State commissions currently oversee area code administration and have provided fertile ground for new entrants to make their arguments that overlays are anticompetitive.

[4] *Telephone Number Portability*, 11 FCC Rcd 8352 (1996).

that NXX codes are in short supply. Since January 1, 1995, the CPUC has issued certificates of public convenience and necessity to 71 new providers of local exchange service. In several California area codes that are "in jeopardy," there are fewer than 71 NXX codes left. Even if the Commission's rule is interpreted not to apply to the CLCs that already have one or more NXX codes in these area codes "in jeopardy," the sheer and growing number of entrants threatens to make it impossible to implement the rule.

AT&T, however, seeks to expand the Commission's rule to truly unmanageable proportions. Instead of "allocating only one NXX code to new entrants," it asks the Commission to require that "all remaining NXXs must be equitably distributed among CLECs, according to their requirements." AT&T, p. 7. But as the Commission found, "[g]uaranteeing more than one NXX in this situation is difficult because by the time the need for the overlay becomes imminent, few NXX codes remain unassigned in the familiar area code." Second Report and Order, n.613. AT&T has offered no way around this dilemma. Indeed, it only proposes to make it worse, by expanding the number of NXXs already reserved for CLCs and requiring them to "be equitably distributed" according to CLCs' "requirements" -- whatever that means. AT&T's request should be denied.

III. ILECs Have A Statutory Entitlement to the Recovery of Their Number Administration Costs.

AT&T requests that the Commission "clarify the position it adopted in the Second Report and Order by providing a simple, 'bright-line' rule: if a cost element attributed to NXX code opening would not be incurred by a neutral third party acting as Numbering Administrator, ... then an ILEC may not charge that expense to competitors as part of its NXX code opening

fee." (AT&T, p. 11.) The 1996 Act, however, provides a different "bright line." AT&T's request must be denied.

Under Section 251(e) of the Act, the "*cost* of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[5] The Commission has interpreted other uses of the word "cost" in Section 251 to refer to the ILEC's total element long-run incremental cost (TELRIC). TELRIC is supposed to represent what it would cost the ILEC to run a hypothetical, most-efficient network. (One can only say "supposed to represent," because such a network will never exist. The ILEC's real costs will always be different from TELRIC.) We have challenged this interpretation of "cost" in our appeal of the First Report and Order. The Commission's own Chairman has characterized its likelihood of success on appeal as "a long shot."[6] But even the Commission has never suggested that "cost," as used in Section 251, could refer to a *third party*'s cost, hypothetical or otherwise. AT&T's request defies common sense and the clear import of the statute. It should be denied.

III. Current Customers of the LEC Who Do Not Select a Carrier for IntraLATA Toll Should Continue to Receive IntraLATA Toll from the LEC.

NYNEX proposes that the state should decide whether a LEC can assign to itself new customers who do not affirmatively select an intraLATA toll carrier. (NYNEX, p. 6.) We do not support this position. New customers who do not make an affirmative selection should be required to dial 10XXX until they make an affirmative choice. This is consistent with current

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[5] See 47 U.S.C. §251(e)(2) (emphasis added).

[6] See Scott Ritter, "FCC's Hundt Doubts Courts Will Back Rules to Raise Local-Phone Competition," Wall St. J., November 11, 1996, p. A9E.

practices for interLATA service. This will also preclude customers from being assigned to the LEC without having received proper written notification of their options.

In contrast, current customers of a LEC who receive proper written notification of their options and who do not select another carrier for intraLATA toll should continue to receive intraLATA toll from their LEC. Such customers have received proper notice and thus have affirmatively selected a carrier. We believe this to be consistent with the Second Report and Order.

Respectfully submitted,

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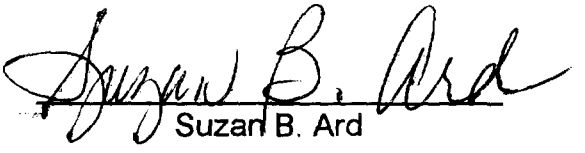
Date: November 20, 1996

CERTIFICATE OF SERVICE

I, Suzan B. Ard, hereby certify that on this 20th day of November, 1996, copies of the foregoing "COMMENTS ON PETITIONS FOR RECONSIDERATION" in CC Docket No. 96-98, were served by hand or by first-class United States mail, postage prepaid, to the parties listed in the attached service list.



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